

114TH CONGRESS  
1ST SESSION

# S. 1687

To amend the Internal Revenue Code of 1986 to restrict the insurance business exception to passive foreign investment company rules.

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IN THE SENATE OF THE UNITED STATES

JUNE 25, 2015

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to restrict the insurance business exception to passive foreign investment company rules.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Offshore Reinsurance  
5 Tax Fairness Act”.

1     **SEC. 2. RESTRICTION ON INSURANCE BUSINESS EXCEP-**  
2                 **TION TO PASSIVE FOREIGN INVESTMENT**  
3                 **COMPANY RULES.**

4     (a) IN GENERAL.—Section 1297(b)(2)(B) of the In-  
5     ternal Revenue Code of 1986 is amended to read as fol-  
6     lows:

7                 “(B) derived in the active conduct of an in-  
8     surance business by a qualifying insurance cor-  
9     poration (as defined in subsection (f)),”.

10    (b) QUALIFYING INSURANCE CORPORATION DE-  
11    FINED.—Section 1297 of the Internal Revenue Code of  
12    1986 is amended by adding at the end the following new  
13    subsection:

14    “(f) QUALIFYING INSURANCE CORPORATION.—For  
15    purposes of subsection (b)(2)(B)—

16      “(1) IN GENERAL.—The term ‘qualifying insur-  
17      ance corporation’ means, with respect to any taxable  
18      year, a foreign corporation—

19          “(A) which would be subject to tax under  
20          subchapter L if such corporation were a domes-  
21          tic corporation, and

22          “(B) the applicable insurance liabilities of  
23          which constitute more than 25 percent of its  
24          total assets, determined on the basis of such li-  
25          abilities and assets as reported on the corpora-

1           tion's applicable financial statement for the last  
2           year ending with or within the taxable year.

3           “(2) ALTERNATIVE FACTS AND CIR-  
4           CUMSTANCES TEST FOR CERTAIN CORPORATIONS.—  
5           If a corporation fails to qualify as a qualified insur-  
6           ance corporation under paragraph (1) solely because  
7           the percentage determined under paragraph (1)(B)  
8           is 25 percent or less, a United States person that  
9           owns stock in such corporation may elect to treat  
10          such stock as stock of a qualifying insurance cor-  
11          poration if—

12           “(A) the percentage so determined for the  
13          corporation is at least 10 percent, and

14           “(B) under regulations provided by the  
15          Secretary, based on the applicable facts and cir-  
16          cumstances—

17           “(i) the corporation is predominantly  
18          engaged in an insurance business, and

19           “(ii) such failure is due solely to tem-  
20          porary circumstances involving such insur-  
21          ance business.

22           “(3) APPLICABLE INSURANCE LIABILITIES.—

23          For purposes of this subsection—

24           “(A) IN GENERAL.—The term ‘applicable  
25          insurance liabilities’ means, with respect to any

1           life or property and casualty insurance busi-  
2         ness—

3               “(i) loss and loss adjustment ex-  
4         penses, and

5               “(ii) reserves (other than deficiency,  
6         contingency, or unearned premium re-  
7         serves) for life and health insurance risks  
8         and life and health insurance claims with  
9         respect to contracts providing coverage for  
10      mortality or morbidity risks.

11           “(B) LIMITATIONS ON AMOUNT OF LIABIL-  
12         ITIES.—Any amount determined under clause  
13         (i) or (ii) of subparagraph (A) shall not exceed  
14      the lesser of such amount—

15               “(i) as reported to the applicable in-  
16         surance regulatory body in the applicable  
17         financial statement described in paragraph  
18         (4)(A) (or, if less, the amount required by  
19         applicable law or regulation), or

20               “(ii) as determined under regulations  
21         prescribed by the Secretary.

22           “(4) OTHER DEFINITIONS AND RULES.—For  
23         purposes of this subsection—

24               “(A) APPLICABLE FINANCIAL STATE-  
25         MENT.—The term ‘applicable financial state-

1           ment' means a statement for financial reporting  
2           purposes which—

3                 “(i) is made on the basis of generally  
4                 accepted accounting principles,

5                 “(ii) is made on the basis of intern-  
6                 national financial reporting standards, but  
7                 only if there is no statement that meets  
8                 the requirement of clause (i), or

9                 “(iii) except as otherwise provided by  
10                 the Secretary in regulations, is the annual  
11                 statement which is required to be filed  
12                 with the applicable insurance regulatory  
13                 body, but only if there is no statement  
14                 which meets the requirements of clause (i)  
15                 or (ii).

16                 “(B) APPLICABLE INSURANCE REGU-  
17                 LATORY BODY.—The term 'applicable insurance  
18                 regulatory body' means, with respect to any in-  
19                 surance business, the entity established by law  
20                 to license, authorize, or regulate such business  
21                 and to which the statement described in sub-  
22                 paragraph (A) is provided.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2015.

